IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2786 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULAM MOHAMMAD AYUB SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for Petitioner

MR S.T. DAVE A.G.P. for Respondent No. 1, 4

MS DEVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/06/2000

ORAL JUDGEMENT

#. Present petitioner detenue Gula Mohammad Ayub Shaikh, has been detained under the provision of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 by an order dated

8.2.2000 passed by District Magistrate, Ahmedabad under Section 3 (2) of the said Act and in pursuant to that, the petitioner has been detained and sent to Bhuj Jail, Dist. Kutch.

#. The grounds of detention indicate that, during inspection, the petitioner was found to be indulging in the activity of solvent thereby adversely affecting the supply of essential commodities and therefore, the detaining authority came to conclusion that he is required to be detained under the provisions of the PBM Act in order to prevent him from continuing such activities.

#. The petitioner has challenged the order of detention on various grounds. The main ground is delay in considering representation by the State Government as well as the Central Government and non-application of mind by the authority. It is contended that the District Magistrate, Ahmedabad had passed the detention order 8.2.2000 and representation was made by the petitioner on 16.2.2000. The District Magistrate, Ahmedabad rejected the said representation on 25.2.2000.

#. I have heard the learned advocate for the petitioner. He restricted his argument only on one point that a representation was sent by the petitioner on 18.2.2000 directly to the authority i.e. Central Government and it has been finally decided by the authority on 8.3.2000. He also argued that simultaneously detenue has also sent representation through jail, which has been forwarded by the jail authority on 18.2.2000 and received by the Central Government on 1.3.2000. He has further submitted that there is a delay of 17 days and said delay has not been satisfactorily explained in the affidavit filed by the authority. In support of the same, he placed reliance on the decision reported in AIR 1999 Supreme Court Page no.684, wherein the Supreme Court has held in para-9, that there was a delay of five days in considering and disposing of detenu's representation. It was further observed by the Apex Court that mere absence of Minister concerned at the Head Quarter is not sufficient to justify the delay.

#. Learned counsel for the respondent no.3 has submitted that it is true that there is a delay, and representation of the detenue was decided by the authority on 8.3.2000. However, relying upon the decision in case of Smt. Kamlabai Vs. Commissioner of Police, Nagpur and Ors.

reported in JT 1993 SC p.666, submitted that the delay is not fatal. The Supreme Court in para-4 observed as under:-

"para -4 The delay by itself is not a ground which proves to be fatal, if there is an explanation. However, the short delay can not be given undue importance having regard to the administrative actions. We do not think that the delay in this is so inordinate as to warrant interference."

#. I have carefully perused the said judgment and the affidavit filed by the Union of India, which reveals that there is no explanation at all regarding this delay and hence the above decision would be of no assistance to the respondent. It is pertinent to note that, in AIR 1999 p.684, the Apex Court did not accept the delay of 5 days, which was not properly or satisfactorily explained by the authority . Thus, on this ground of delay only, the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated 8.2.2000 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed. The detenu- Gulam Mohammad Ayub Shaikh is set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

kks